

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Shimon Moalem,

4 Plaintiff

5 v.

6 FedEx Ground Package System, Inc.

7 Defendant

Case No.: 2:18-cv-01223-JAD-NJK

**Order granting defendant's motion to
dismiss for failure to state a claim and
granting plaintiff leave to amend his
complaint**

[ECF No. 14]

8 Shimon Moalem sues FedEx Ground Package System, claiming that it failed to timely
9 deliver goods and equipment that he shipped to himself in New York for use in a trade show and
10 that he consequently incurred losses in excess of \$86,000.¹ Acting pro se, Moalem asserts state-
11 law claims for breach of contract, breach of the implied covenant of good faith and fair dealing,
12 and loss of business opportunities.² FedEx moves to dismiss these claims, arguing that they are
13 preempted by the Carmack Amendment, 49 U.S.C. § 14706, to the Interstate Commerce Act.³
14 Because Moalem's contract claim stems from the parties' shipping agreement,⁴ and "[i]t is well
15 settled that the Carmack Amendment is the exclusive cause of action for interstate-shipping
16 contract claims alleging . . . delay, loss, failure to deliver[,], or damage to property,"⁵ I dismiss
17 this claim as preempted. I similarly dismiss his implied-convenant and lost-business-
18 opportunities claims because the amendment also "constitutes a complete defense to common
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21 ¹ ECF No. 10 at 2–3 (first amended complaint).

22 ² *Id.* at 4–7.

23 ³ ECF No. 14.


⁴ *See* ECF No. 10 at 4.

⁵ *Hall v. N. Am. Van Lines, Inc.*, 476 F.3d 683, 688 (9th Cir. 2007).

1 law claims alleging all manner of harms.”⁶ And although Moalem argues that his state-law
2 claims somehow fulfill the Carmack Amendment’s “intended purpose,”⁷ it is clear that the
3 damages he alleges that FedEx caused him can be addressed only through a claim brought under
4 the amendment.⁸ I therefore dismiss Moalem’s first amended complaint but grant him leave to
5 amend so that he may, if he chooses, pursue a Carmack Amendment claim against FedEx.⁹
6 Accordingly,

7 IT IS HEREBY ORDERED that FedEx’s motion to dismiss [ECF No. 14] is
8 **GRANTED**. Moalem’s claims are **dismissed**, and he may file an amended complaint within
9 **20 days of this order**. Failure to timely file an amended complaint will result in closure of this
10 case.

11 Dated: January 28, 2019

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13 U.S. District Judge Jennifer A. Dorsey
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21 ⁶ *Id.* at 689 (upholding dismissal of state-law fraud and conversion claims).

22 ⁷ ECF No. 16 at 8 (response to motion to dismiss).

23 ⁸ *See Hall*, 476 F.3d at 688–89; *see also, e.g., Hunter v. United Van Lines*, 746 F.2d 635 (9th Cir. 1984) (addressing a claim brought under the Carmack Amendment).

⁹ Because I hold that all of Moalem’s state-law claims are preempted, I do not reach FedEx’s alternative argument that he failed to allege an element of his lost-business-opportunity claim.